

REMARKS

The Office Action of April 8, 2009 has been carefully considered. Claims 1-24 were pending in the application. Claims 1-8, 10 and 12-24 were rejected. Claims 1-24 have been amended. Claims 9 and 11 have been amended from a “use” claim to U.S. acceptable format. None of the amended claims introduce new subject matter.

In response to the objection to the drawings, substitute drawings for Figures 1 and 2 are supplied.

The Examiner objected to the specification because it contains an embedded hyperlink and/or other form of browser-executable code on page 5. It is assumed the Examiner made this statement because the web site was underlined. However, the published application does not contain the underlining and, of course there is no embedded hyperlinks in paper copies or pdf copies. Applicant believes the problem is therefore solved.

The amended claims respond to the Examiner’s claim objections.

35 USC 112

Claims 1-8, 10, and 12-24 were rejected under 35 USC 112, second paragraph. It is believed the amendments to the claims moot the rejections.

35 USC 102

Claims 1-4, 6, 7, 10, and 12-20, 22-23 were rejected under 35 USC 102 as anticipated by Dubensky US 5843723. Applicant traverses the rejection.

The Examiner failed to make a prima facie showing of novelty. Claim 1 and all claims dependent therefrom requires that the viral particle contains structural proteins not from an alphavirus. The Examiner pointed to Dubensky at Fig. 8 for that concept. However, Dubensky at Fig. 8 does not show that the vector contains any region that codes for structural proteins. Thus Dubensky does not show a viral particle that contains structural proteins not from an alphavirus.

Furthermore, at col. 5, lines 27-40, Dubensky discloses that the invention provides an alphavirus structural protein expression cassette, and this disclosure is inapposite to the present claims which call for structural proteins that are not from an alphavirus.

The Examiner further referred to the disclosure at col. 6, lines 4-30 as teaching alphavirus grown in a packaging cell line expressing VSV-G. However, the disclosure states that the packaging cell lines comprise a stably integrated expression cassette which directs expression of alphavirus structural proteins. Thus, the mere presence of a packaging cell line expressing VSV-G does not negate the fact that it also produces viral particle structural proteins from an alphavirus. Thus the Examiner has not pointed to a disclosure showing a viral particle consisting of structural proteins that are not from an alphavirus. Dubensky never discloses that. For that reason, the rejection fails to make the prima facie case.

35 USC 103

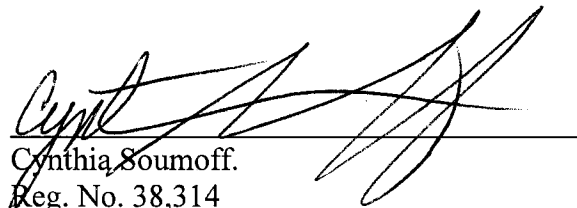
Claims 1-8, 10 and 12-24 were rejected under 35 USC 103(a) as unpatentable over Dubensky et al in view of Kung (2000) or Raju (1991). Applicant traverses the rejection.

The Examiner applied Dubensky as above for the novelty rejection. Since Dubensky fails to teach a viral particle with structural proteins consisting of structural proteins not from an alphavirus, and the since the other references do not cure the missing element, the combination of references do not render the claims obvious. There has been no prima facie showing of obviousness.

In view of the foregoing, Applicants submit that all pending claims are in condition for allowance and request that all claims be allowed. The Examiner is invited to contact the undersigned should he believe that this would expedite prosecution of this application. It is believed that no fee is required. The Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 13-2165.

Respectfully submitted,

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